

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
BEYER LLC d/b/a BEYER PROJECTS, :
:
Plaintiff-Counterclaim Defendant,:
:
-against- : 23-CV-3819 (VSB)
:
:
ANNAMARIE BALDESSARI, : **ORDER**
INDIVIDUALLY AND AS TRUSTEE OF :
THE JOHN BALDESSARI TRUST-1991 (as :
restated and amended); and ANTONIO :
BALDESSARI, INDIVIDUALLY AND AS :
TRUSTEE OF THE JOHN BALDESSARI :
TRUST-1991 (as restated and amended), :
:
Defendants-Counterclaim Plaintiffs.:
:
-----X

VERNON S. BRODERICK, United States District Judge:

On July 17, 2023, Plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). (Doc. 18.) “[W]hen a plaintiff properly amends [a] complaint after a defendant has filed a motion to dismiss that is still pending, the district court has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint.” *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020). Accordingly, it is hereby:

ORDERED that Defendants shall file a letter within seven (7) days deciding whether their motion to dismiss should be deemed moot without prejudice to refile a new motion to dismiss in accordance with Federal Rule of Civil Procedure 15(a)(3), or if I should evaluate Defendants’ current motion to dismiss in light of the facts alleged in the amended complaint.

SO ORDERED.

Dated: July 18, 2023
New York, New York

Vernon S. Broderick
Vernon S. Broderick
United States District Judge